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May 5, 2016

*Sent via email*

San Diego Regional Water Quality Control Board  
Attn: Erica Ryan  
[sandiego@waterboards.ca.gov](mailto:sandiego@waterboards.ca.gov)

**RE: PIN 794813, Comments on San Juan Creek Water Quality Improvement Plan Section B.2.**

Dear Ms. Ryan,

On behalf of Orange County Coastkeeper ("Coastkeeper"), I submit the following comments on the South Orange County Copermittee's Water Quality Improvement Plan ("WQIP") submitted in accordance with Order No. R9-2013-0001, NPDES Permit No. CAS0109266, as amended by Order No. R9-2015-001 and Order No. R9-2015-0010 ("MS4 Permit"). Coastkeeper is a non-profit corporation dedicated to the preservation, protection and defense of the environment, the wildlife and the natural resources of the coastal waters in Orange County. We appreciate this opportunity to comment on the WQIP.

A. Background

Coastkeeper has played an active role in the development and adoption of the MS4 permit, and our goal is to ensure that the WQIPs successfully implement the goals and strategies of the MS4 permit. Coastkeeper's continued involvement in implementing MS4 permits regularly confirm our general frustration with the slow pace of water quality improvements as a result of these complex regulatory mechanisms. Existing MS4 permits have not reduced urban runoff impacts to water quality to the extent that the public deserves or to the extent the law requires under existing MS4 Permits. Orange County and San Diego County swimmers, surfers, kayakers and the like continue to suffer from waterways that are too often closed or posted for pollution.

The San Diego MS4 Permit requires WQIPs be developed to ensure Copermittees give their designated watersheds a hard look and establish a detailed plan to preserve and protect its beneficial uses and future existence. Coastkeeper is confident that if the necessary effort is put forth during the development of the WQIPs, these plans will have a positive change on the water quality standards in our region. We acknowledge the time dedicated and the money spent creating the WQIP thus far, but provide these further suggestions because the iterative process has often been underutilized and ineffective to date in bringing MS4 discharges into compliance with water quality standards. As the State Water Resources Control Board asserted, '[u]rban runoff is causing and contributing to impacts on receiving waters throughout the state and impairing beneficial uses.' More than a decade later, this is still true.

B. MS4 Permit Requirements

The MS4 Permit delineates discharge prohibitions, receiving water limitations, effluent limitations, and requires compliance with such discharge prohibitions and receiving water limitations. "Discharges from MS4s may not cause or threaten to cause a condition of pollution, contamination, or nuisance in receiving

waters of the state.” R9-2013-0001, p. 3. Non-storm water discharges into MS4s are prohibited unless authorized by a NPDES permit; MS4 discharges are subject to discharge prohibitions in the Basin Plan; and ASBS discharges are prohibited unless subject to the Special Protections. Order No. R9-2013-0001, p. 13. “Discharges from MS4s must not cause or contribute to the violation of water quality standards in any receiving waters.” Order No. R9-2013-0001, p. 14. The MS4 Permit requirements implement the TMDLs adopted by the San Diego Water Board and approved by the USEPA when the Order was issued, and establishes the water quality based effluent limitations consistent with the TMDL wasteload allocations assigned to the Copermittees’ MS4. Order No. R9-2013-0001, p. 2.

With these requirements in mind, which the WQIP must strive to create plans that will carry them out, we evaluate the WQIP.

### C. WQIP

The Copermittees of the South Orange County Watershed Management Area developed the first two sections of a Water Quality Improvement Plan for the San Juan Hydrological Unit. Order No. R9-2013-0001, p. 17. The Permit requires the Plan identify the water quality priorities associated with stormdrain discharges in the overall hydrological unit. The San Juan Hydrological Unit’s major surface water and subwatersheds include Laguna Coastal Streams Watershed, Aliso Creek Watershed, Dana Pont Coastal Streams Watershed, San Juan Creek Watershed, San Clemente Coastal Streams Watershed, and San Mateo Creek Watershed. Order No. R9-2013-0001, p. 17.

The purpose of the WQIP is to reach improved water quality in MS4 discharges and receiving waters, thus furthering the CWA’s objective to protect, preserve, enhance, and restore the water quality and designated beneficial uses of the state. Order No. R9-2013-0001, p. 17. In order to do this, the Copermittees must first identify the highest priority water quality conditions and priority water quality conditions within a watershed and implement strategies through their jurisdictional runoff management programs. Order No. R9-2013-0001, p. 17.

To properly evaluate the water quality conditions and the pollutants that threaten the water bodies’ value, the WQIP must (1) ensure all available data was gathered; (2) incorporate the TMDLs and the beneficial uses of the major sub-watersheds; and (3) prepare to list numeric goals and strategies in the coming WQIP sections that prohibit non storm-water discharges and to prevent storm water discharges to the maximum extent practicable (“MEP”).

#### 1) Data Incorporation, Review, and Assessment

The MS4 Permit requires the consideration of “physical, chemical, and biological” data. Coastkeeper advises the Copermittees to strive to evaluate the High Priority Water Quality Conditions (“HPWQCs”) and Priority Water Quality Conditions (“PWQCs”) in a manner that evaluates waterbodies using these three types of data. There has been a lack of incorporation of biological and physical data considered in other WQIPs for this Region, thus Waterkeeper requests the Board ensure the WQIP incorporated each type. Where such data has not been evaluated or created, it should be the focus of the Copermittees.

The WQIP states the priority receiving waters were identified using the best available data. The sources of data include local data from Permittees, the public, available analytical data and related geospatial data, and monitoring data collected primarily post-2010. Coastkeeper is concerned with the WQIP’s incorporation

of the data collected. With regards to public data, Coastkeeper believes the public call for data, which was only one month long, may not have been sufficient to coordinate and accumulate the data supply that could exist.

Coastkeeper recommends a more thorough assessment of MS4 discharge impacts identify potential impacts to receiving waters such as: discharge prohibitions (A.1; A.3); available monitoring data from Copermittee's outfalls; locations of MS4 outfalls; MS4 outfalls known to discharge non-storm water or pollutants to receiving waters impacting beneficial uses; and the potential improvements that can be achieved. Order No. R9-2013-0001, p. 20.

Coastkeeper does not have the capacity to investigate the available relevant data in the San Diego region, Coastkeeper asks the Board and Board Staff to ensure all applicable studies and data have been considered, which could include all existing data on biological, physical, and chemical data, studies, and analyses, including SWAMP data. If such data has not been reviewed, incorporated, and assessed as part of the WQIP chapters that have been submitted, we respectfully ask the Board to require amendment to the drafts as they now stand, and a re-assessment of PWQC and HPWQCs.

- 2) The WQIP fails to list which parts of the San Juan Hydrological Unit are 303(d) listed, subject to approved TMDLs, and fails to list the water bodies' beneficial uses.

The Regional Board has expressed concern in past WQIPs submitted that did not have a fully inclusive list of all priority water quality conditions that should have been identified in data and information that were required to be considered pursuant to Provisions B.2.a. and B.2.b. The MS4 Permit requires the WQIP drafters assess receiving water conditions, which includes 303 d listing, TMDL, BIOL, receiving water limitations, historical conditions of waters, data of water, erosion impacts, adverse impacts, and improvements that can be achieved in watershed. The WQIP fails to illustrate a thorough assessment of these factors under Provisions B.2.a. and B.2.b.

Coastkeeper encourages the Copermittees to include an introduction to each major sub-watershed in the San Juan Creek Hydrological Unit in Chapter 1. For each major sub-watershed, the WQIP should touch on historical conditions of the water, erosion impacts, the TMDLs applicable to the watershed, all in addition to the data and process that has been used to identify water quality condition, which the WQIP has focused on. For example, in order to assess the receiving water conditions as required in the MS4 Permit, the WQIP should identify the TMDLs that any 303(d) listed sub-watersheds are subject to. This will clarify which pollutants threaten the waterbodies' health and will magnify the urgency of the problem. Additionally, Coastkeeper advises the Copermittees to include the current beneficial uses of each of the sub-watersheds in order to exemplify their value to the community. Thereafter, the reader will associate the water's conditions with the impaired uses, thus gaining a sense of the importance of the strategies and solutions listed in the WQIP.

With regards to the 303(d) listings and TMDLs, in order to successfully cure the conditions in the San Juan Hydrological Unit, it is first necessary to consider the magnitude of the problem. For instance, Aliso Creek is 303(d) listed for Phosphorus, Selenium, Total Nitrogen as N, Toxicity, and Indicator Bacteria. Aliso Creek has a TMDL in place for each of these pollutants. San Mateo Creek is 303(d) listed for Diazinon and Trash. San Juan Creek is 303(d) listed for DDE (dichlorodiphenyldic hloroethylene) and Indicator Bacteria. San Juan Creek is also listed and has TMDLs in place for Phosphorus, Selenium, Total Nitrogen

as N, and Toxicity. Each of these TMDLs has a proposed draft or implementation deadline, some of which are approaching quickly.

With regards to the beneficial uses, the San Diego Basin Plan lists Aliso Creek's existing beneficial uses as Agriculture, Rec2, WARM, WILD, and its potential beneficial use as REC1. San Juan Creek's beneficial uses include Agriculture, Industrial, REC1, REC2, WARM, COLD, WILD and in some portions of the Creek, Spawning. San Mateo Creek watershed's beneficial uses include REC2, WARM, COLD, WILD, and in some portions of the creek, RARE and SPAWNING. A potential beneficial use of the watershed is REC1. The Pacific Ocean's beneficial uses include Industrial, Navigation, REC1, REC2, Commercial, Biological, WILD, Marine, Aqua, Migratory, Spawning, and Shellfish Harvesting. Basin Plan, Chapter 2. The TMDLs create the compliance requirements that the Copermittees should be intending to achieve and incorporating into this WQIP. The beneficial uses explain the water's value to our environment and economic system, which the Copermittees should be intending to protect in the WQIP.

Coastkeeper advises the WQIP to includes applicable TMDL demands to ensure the TMDL deadlines are met. While the waterbodies subject to TMDLs may not need to be automatically elevated to having HPWQC status, Coastkeeper does think it important to draw some attention to the TMDLs, as to not miss the upcoming TMDL deadlines. Since the Regional Board is moving away from TMDL mechanisms, Coastkeeper encourages completing those in place in connection with the new WQIP methodologies. The Copermittees must carefully evaluate which waterbodies require the HPWQC status, and must ensure waters subject to TMDLs and those that are not have this status.

In conclusion, Coastkeeper encourages the Copermittees to identify the 303(d) listings, the approved TMDLs, and the beneficial uses that the major sub-watersheds are subject to or accommodate.

### 3) Waterkeeper's Recommendations for Upcoming Provision B.3. Submission

In accordance with the MS4 Permit, Provision B.3, the Copermittees will be submitting Goals, Strategies and Schedules on October 1, 2016. As a precaution to these future WQIP sections, Coastkeeper advises the Copermittees to include numeric goals based on already planned actions; establish effective BMPs with an evaluation mechanism; and include each of the major sub-watersheds' TMDL schedules.

The WQIP should list numeric goals and strategies that address the highest priority water quality conditions by effectively prohibiting non-storm water discharges to the MS4, reduce pollutants in stormwater discharges from the MS4 to the MEP, and protect the water quality standards of receiving waters. The Regional Board expressed concern that numeric goals of only relative numeric changes make progress difficult to monitor without some baseline information. The Regional Board also refused to accept goals where it was difficult to understand the relationship between the interim numeric goal and the requirement to demonstrate "reasonable incremental progress toward achieving the final numeric goals in the receiving waters and/or MS4 discharges" such as education-related activity or conducting a study or assessment. In sum, in order to ensure the established control measures or best management practices are effective, there must be express numeric limits to compare the monitoring results to.

Pursuant to II.A.3.a., "pollutants in storm water discharges from MS4s must be reduced to the MEP." The effectiveness of BMPs must be monitored and adapted over time. WQIP 2-1. The MS4 Copermittees are required to monitor, and the WQIP presents monitoring as a main priority. Monitoring schedules and result requirements must be in the WQIP. Further, if exceedances occur, there must be an action plan that

goes into effect to ensure new BMPs or control measures are established. Furthermore, the BMPs chosen by the Copermittees need to be sufficient to implement the applicable WLAs. The Regional Board instructs that the WQIP include an assessment of monitoring data to support the conclusion that the BMPs being implemented are capable of achieving compliance with the final WQBELs. Thus, the WQIP should also include milestones or other mechanisms where needed to ensure that the progress of implementing BMPs can be tracked. Improved knowledge of BMP effectiveness gained should thereafter be reflected in the demonstration and supporting rationale that implementation of revised BMPs will attain water quality standards.

Finally, Coastkeeper recommends incorporating the TMDL schedules into the WQIP so the TMDL deadlines will remain a priority of the WQIP. As indicated in Attachment E to the MS4 Permit, the WQIP must include the Revised TMDLs for Indicator Bacteria, Project 1 and the TMDLs for Indicator Bacteria, Baby Beach in Dana Point Harbor Shelter Island Shoreline Park in San Diego Bay. The TMDL scheduling requirements must be linked to the WQIP monitoring schedule and numeric limits. If the scheduled monitoring demonstrates exceedances of the numeric limits, the WQIP must include planned actions and activities the Copermittees will make. Pursuant to II.A.3.b., "Each Copermittee must comply with applicable WQBELs established for the TMDLs . . . pursuant to the applicable TMDL compliance schedules." Without incorporating the TMDL schedules into the WQIP, the TMDLs' WQBELs and deadlines will not be a priority.

Coastkeeper requests the Copermittees do a thorough assessment of all accessible relevant data in identifying priority water bodies, identify TMDLs, beneficial uses and 303(d) listings in order to adequately describe the water quality conditions, and in their future submissions, implement numeric goals and monitoring strategies, and establishing schedules for compliance, including the TMDL schedules already in place.

Thank you for the opportunity to comment on the WQIP. Please feel free to contact me with any questions or for additional feedback.

Sincerely,

Jacqueline Neumann  
Staff Attorney  
Orange County Coastkeeper